

**Issue:** Interstate Commerce (Exemption Issue)

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## Claim for Credit

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record, it is recommended that this matter be resolved in favor of the Department.

**Findings of Fact:**

1. The Department's *prima facie* case was established with the introduction into evidence of the Department's Notice of Tentative Determination of Claim. Dept. Grp. Ex. No. 1.

2. Taxpayer was incorporated in Delaware on April 10, 1989 (Taxpayer Ex. No. 1) and is the wholly-owned subsidiary of CORPORATION, an Illinois Corporation. Tr. p. 18.

3. On May 17, 1989, taxpayer purchased a Cessna Citation 650 airplane. Taxpayer Ex. No. 3.

4. On July 11, 1989, taxpayer in consideration of moving to Illinois sought a letter ruling from the Department requesting a determination of whether it could lawfully avoid the application of Illinois use tax for the purchase price of the aircraft. Taxpayer Ex. No. 3.

5. In the letter ruling, taxpayer represented that it was a non-resident of Illinois, that the aircraft was acquired outside of Illinois, and that it would be used outside of the state in the operation of taxpayer's business for three months prior to taxpayer relocating to Illinois. Taxpayer Ex. No. 3.

6. Based on the information given in the letter ruling request, the Department agreed that, pursuant to 86 Admin. Code ch. I, Sec. 150.315, the purchase of this aircraft was not subject to Illinois Use Tax. Taxpayer Ex. No. 4.

7. Taxpayer moved its address and principal place of business to Elgin, Illinois on September 1, 1989. Taxpayer Ex. No. 2.

8. The aircraft had been brought into Illinois the day after its purchase; had, in fact, been hangared in Illinois on five separate occasions during the

90-day period, and 80 percent of its landings and take-offs during the period occurred in Illinois. Taxpayer Ex. No. 7.

9. Trips into Illinois were made for the sole purpose of picking up or dropping off officers, employees, and guests of CORPORATION, taxpayer's parent company. Tr. p. 32.

### **Conclusions of Law:**

Under the Use Tax Act, persons who incur tax liability are required to file returns.<sup>1</sup> 35 ILCS 120/3. Penalties are imposed by the Department for failure to comply with this section. Prior to January 1, 1994<sup>2</sup> 35 ILCS 120/5 of the Retailers' Occupation Tax Act provided, in relevant part:

... where the failure to file any tax return required under this Act on the date prescribed therefor (including any extensions thereof), is shown to be unintentional and nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed date or is due to other reasonable cause the penalties imposed by this Act shall not apply. ...

35 ILCS 120/5.

Case law provides that "reasonable cause means nothing more than the exercise of ordinary business care and prudence." Haywood Lumber & Mining Co. v. Commissioner, F.2d 769 (2nd Cir. 1950). All the facts and circumstances should be considered in determining whether a taxpayer has exercised ordinary business care and prudence. In this instance, the taxpayer submitted a formal letter ruling request and relied on the resulting private letter ruling issued by the Department. Department regulations concerning private letter rulings, therefore, should be examined in determining if the taxpayer exercised due care.

Section 1200.110 (b)(1) of the Illinois Administrative Code expressly requires the following information in private letter ruling requests:

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<sup>1</sup>. The Use Tax Act incorporates specific sections of the Retailers' Occupation Tax Act. See, 35 ILCS 105/12.

<sup>2</sup>. As of January 1, 1994, Section 5 penalties are provided for under the Uniform Penalty and Interest Act. See, 35 ILCS 735/3-1 et seq.

A complete statement of the facts and other information pertinent to the request. The request must contain a complete statement of all material facts. The material facts include the identification of all interested parties, a statement of the business reasons for the transaction, and a detailed description of the transaction. The request must contain an analysis of the relation of the material facts to the issues.

2 Admin. Code ch I, Sec. 1200.110(b)(1).

Upon examination of the taxpayer's letter ruling request it is found that it fails to include the necessary information to satisfy the regulation and thus bind the Department.

To satisfy the regulation the taxpayer is obligated to include all material facts. Material facts are, of course, determined by examining the relevant section of the law. The Department relied on section 150.315(b) of the regulations which provides a Use Tax exemption:

Where a business that is not operated in Illinois, but which does business in another state, is moved to Illinois ... such business shall not be tax on its use, in Illinois, of used tangible personal property which such business bought outside Illinois and used outside Illinois in the operation of such business for at least 3 months before moving such used property to Illinois for use here.

Looking to the letter ruling request one notices that the taxpayer failed to identify all interested parties. Taxpayer is a wholly-owned subsidiary of CORPORATION, an Illinois corporation. Such a relationship would be relevant and should have been included in the letter ruling request, given the purpose to which the aircraft was used, as discussed below.

Taxpayer also fails to indicate the nature of its business. Taxpayer admits at hearing that the sole purpose of its business is to transport its parent corporation's officers, employees, and guests not, for example, to transport the public at large. Tr. p. 32.

In the ruling request taxpayer represented that it has not only operated its business outside the State of Illinois since its inception but that it had

maintained and operated the aircraft outside Illinois since the aircraft was acquired. The record indicates, however, that the taxpayer did not operate the airplane solely outside of Illinois. In fact, the airplane was brought into Illinois the day after it was bought and used thereafter in Illinois on a continual basis. Taxpayer Ex. No. 7. Eighty percent of take-offs and landings were in Illinois during the 90 day period in question. This surely could have been anticipated and included in the letter ruling request given the parent's principal place of business lies in Illinois and the purpose for which the aircraft was used.

When issuing a private letter ruling the Department only has the facts that the taxpayer sets forth in his request. It has no other means of acquiring relevant information. Here, the taxpayer presented facts which were incomplete at the very least, thus making reliance on the letter ruling unreasonable.

Such conduct falls short of meeting the applicable standard of ordinary business care and prudence. The standard would demand that the taxpayer comply with the Department's regulation addressing private letter rulings. As discussed, this regulation requires the taxpayer outline all material facts. A private letter ruling cannot be reasonably relied on where the taxpayer has failed to outline the specific facts and circumstances the Department would need to make an informed decision and thus a binding one. The penalty under Section 5 should, therefore, not be abated because the taxpayer failed to exercise ordinary business care and prudence.

WHEREFORE, for the reasons stated above, it is my recommendation that the Claim for Credit as herein filed be denied.

Date:

Christine E. Ladewig  
Administrative Law Judge